

Input by civil society to the EASO Annual Report 2018

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Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 7 March 2019**.

Instructions

Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.

Please contribute your feedback online or copy and paste your answers from an editable type document

Questions

1. Access to territory and access to asylum procedure (including first arrival to territory and registration)

+ Access to asylum procedure for unaccompanied minors (UAM) : Remaining matter of concerns

In 2016, 474 UAM claim asylum in France while 35 935 claim asylum in Germany, 6020 in Italy, 2790 in Benelux, 3175 in the UK.

In 2017, 591 UAM claim asylum in France while more than 18000 unaccompanied minors were taken care of by child protection.

In 2018, data regarding asylum claim of UAM has not been published yet, but access to asylum for minors in France remain highly difficult.

(sources below a,b,c,d)

Safe Passage in France, while helping the UAM to access asylum procedure and family reunification under the Dublin 3 regulation, has observed that the UAM face the following obstacles:

1) The lack of a clear procedure regarding access to asylum for the UAM

In France, the asylum procedure consists of different steps. First, an asylum seeker has to present himself in a pre-reception center. Then, an asylum seeker has to present himself in the "Prefecture" according to a notice issued by the pre-reception center. At this stage, the Prefecture registers the asylum application.

Most of the pre-reception centers around France do not deal with unaccompanied minors, therefore unaccompanied minors have to present themselves directly to the "Prefecture" in order to claim asylum.

However, no specific agents or procedures are dedicated to the unaccompanied minors in the "Prefectures".

The unaccompanied minors face often refusal to get access to asylum or at least they face very long delay.

More precisely, in September 2018, Medecins Sans Frontières and Safe Passage challenge the publication of the public market offer regarding the management of the pre-reception center of the asylum claims. A provision of this offer foresees that the pre-reception of UAM concerns only the UAM already assisted by an Ad Hoc Administrator. Such a provision appears in violation of the French law (source below e.) and amounts to effectively depriving the Unaccompanied Minors of an access to the asylum procedure. (Indeed, the chance for an UAM to be followed up by an ad-hoc administrator is, at this stage, very low).

Therefore, we see that it is legitimate to ask in front of which actors an UAM should present himself in France to have access to his asylum right and to not suffer extensive delay.

2) The delay caused by the appointment of a legal guardian.

Safe Passage team in France has observed that delays in the appointment of the legal guardian can delay an asylum claim by up to six months.

The consequences are concerning as it delays consequently family reunification under Dublin III and it prevents UAM close to the majority from benefiting from a minor asylum application.

The question of the designation of the ad hoc administrator for UAM sounds paradoxical as it has been foreseen as a guarantee offered to UAM but it generates delay and obstacles to access asylum.

In France, the delay to access asylum for UAM happens to be longer than for adults.

a) The unaccompanied minors face delay as the administrative authority do not notify immediately to the prosecutor their asylum application (despite the French law).

Since 2016, unaccompanied minors, who face those delays and whose claims were followed up by Safe Passage or NGOs in France, introduce legal actions "Référé Liberté" in front of the administrative courts throughout the country. (source below e.)

The administrative courts have constantly considered that when the administrative authorities (Prefectures) do not notify immediately to the Prosecutor the asylum claim of an UAM in order to get a designation of an ad hoc administrator, this constitutes a breach of a right to asylum. The courts have constantly ordered the "Préfet" to inform immediately the Prosecutor so that the UAM can claim for asylum.

b) The unaccompanied minors face delay as the Prosecutor does not "immediately" designate an ad hoc administrator (despite the French law).

As a legal remedy appears complicated in these circumstances, there is no national jurisprudence and actors such as Safe Passage have to try to contact directly the office of the Prosecutor

2. Access to information and legal assistance (including counselling and representation)

4. Providing interpretation services

4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)

- New positive development :

The Sandhurst treaty ("Treaty between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the french republic concerning the reinforcement of cooperation for the coordinated mangement of their shared border") came into force on 1st February 2018.

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674885](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674885/Treaty_Concerning_the_Reinforcement_Of_Cooperation_For_The_Coordinated_Management_Of_Their_Shared_Border.pdf)

[/Treaty_Concerning_the_Reinforcement_Of_Cooperation_For_The_Coordinated_Management_Of_Their_Shared_Border.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674885/Treaty_Concerning_the_Reinforcement_Of_Cooperation_For_The_Coordinated_Management_Of_Their_Shared_Border.pdf).

This Treaty records the agreement of the UK and France to “Collaborate closely, effectively and in the full spirit of co-operation on the implementation of the Dublin III Regulation”.

This treaty includes the following positives provisions:

1) Regarding the delays:

- o The UK shall provide a decision on the Take charge request to France within 10 working days of the conclusion of engagement with the relevant UK local authority;
- o the Party where the unaccompanied minor has lodged the application for international protection shall aim to transfer the unaccompanied minor to the other Party within 15 working days.
- o the Party aim to respond to request as quickly as possible and in any case in line with the timeframe set out in regulation 604/2013.

2) The best interest of the child

This treaty reiterates that the best interest of the child might be a primary consideration and in particular the parties reiterate their obligations to take due account of a) the family reunification possibilities, b) the minor's

well being and c) safety and security consideration / risk of trafficking, d) the view of the minor in accordance with his age and maturity.

- Matter of concerns :

As Safe Passage worked on individual cases of unaccompanied minors in France with family in the UK introduced after the Sandhurst treaty, Safe Passage observed that most of the cases did not receive a decision within the two months which is a regulatory timeframe set out in Dublin III (and despite the reiteration in the Sandhurst treaty to respond to request as quickly as possible and in any case in line with the Dublin III regulation).

Safe Passage has observed that on none of the cases encountered for which the two month timeframe have been violated, the take charge request has been accepted by default in accordance with the Dublin regulation.

With regards to the transfer times to the UK, Safe Passage has noticed a significant reduction of the delays, with an average time of 33 days for Safe Passage's cases (but despite the 15 working days foreseen in the treaty).

- Relevant national jurisprudence

MS (a child by his litigation friend MAS) v SSHD JR/9682/2017:

<https://www.refworld.org/pdfid/5b55f08e4.pdf>

-In a judgment handed down on 19 July 2018, the Upper Tribunal Immigration and Asylum Chamber allowed an application for judicial review brought by an unaccompanied asylum seeking child, living in France, seeking family reunion through the Dublin III Regulation with his brother in the UK.

-The reason for the rejection of the Take charge request was that the SSHD would not accept MS and MAS' s evidence regarding their family link because the records from MAS' asylum claim 10 years ago recorded that he had no siblings.

-Tribunal rejected the Home Office's arguments. It found that there was an investigative duty on the UK Home Office upon receipt of a TCR. It found as a consequence that the UK Home Office had acted unlawfully in refusing the TCR made by the French authorities and quashed the three refusals that the Home Office had made regarding the TCR in this case.

5. Specific procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

+ The specific procedure of the "post Calais Camp expedited process" :
(The process conducted by the Home Office across France after the dismantling of the Calais camp in order to interview UAM who claim to be reunited with their family in the UK).

- Relevant national jurisprudences :

+ Judgement R(FTH) v SSHD, JR/1256/2018 :

<https://bhattermurphy.co.uk/files/documents/FTH%20Judgement.pdf>

- The judgment was handed down by the Upper Tribunal (UT) on 11 June 2018.

- FTH is an asylum seeker from Eritrea, he lived in appalling conditions in a makeshift migrant camp in Calais. The camp was demolished on 24-26 October 2016 and FTH, like other unaccompanied minors, was placed into French social services accommodation.
- The expedited process as it applied to FTH included the following aspects of unfairness: FTH was interviewed by telephone with an interpreter speaking his second language ; similarly, YH was interviewed by telephone without an interpreter ; Neither FTH nor YH had their interview records read back to them in order to give them an opportunity to make corrections to information recorded, the official who made the decision to reject FTH's application was based in London and was not the official who interviewed him. The official relied on minor discrepancies in the details provided by FTH and YH about extended family members, without taking into account the circumstances in which FTH was interviewed; When FTH was refused he was provided with no reasons for the decision.
- FTH lived in northern France, where he resumed attempts to cross the Channel. At that time, he was referred to Safe Passage
- FTH was admitted to the UK on 27 July 2018 following negotiations and a compromise put forward by the SSHD late on in the proceedings, under which the SSHD agreed to consider a take charge request made by the French authorities pursuant to Dublin III on the basis that he accepted that FTH was related to his brother YH as claimed and that FTH would be transferred.

The expedited process applied to FTH has since been found to be systemically unfair according to the Common Law (see jurisprudence below).

+ Judgment in R (Citizens UK) v Secretary of State for the Home Department :

source : <http://www.bailii.org/ew/cases/EWCA/Civ/2018/1812.html>

<https://www.theguardian.com/uk-news/2018/jul/31/home-office-misled-court-about-treatment-of-child-refugees-from-calais-judges-find>

- This judgment was handed down by the Court of Appeal on 31 July 2018.
- Over 500 children who claim to be reunited with their family in the UK were refused. The refusals were communicated to the children through the French authorities, and with minimal, if any, reasons given by the UK.
- Safe Passage, through Citizens UK, began to challenge against this process in front of the High Court. In the High Court, the process was upheld principally because of the Home Office's argument that its failure to give adequate reasons was excusable on the basis of a requirement of the French authorities, and due to the time pressure it was under in conducting the operation.
- Before the hearing in the Court of Appeal evidence emerged in the form of emails between UK and French authorities which showed that the French authorities were strongly advocating in favour of giving children more detailed reasons, warning that without them, children may lose faith in the process and abscond. Evidence showed that Home Office was advised by their legal team not to give reasons in order to avoid possible legal challenge.
- The Court of Appeal found that the process fell below the requirements of procedural fairness under common law, and declared the process unfair and unlawful. Furthermore, it found the State in serious breach of its duty of candor for misleading the High Court and failing to disclose its actual rationale for not giving reasons to children whose claims were refused.

6. Reception of applicants for international protection (including information on reception capacities – rise/fall/stable, material reception conditions, i.e. housing, food and clothing and

financial support, contingency planning in reception, access to labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

7. Detention of applicants for international protection (including detention capacity – rise/fall /stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)

9. Procedures at Second Instance (including organisation of the process, hearings, written procedures, timeframes, case management, including backlog management)

10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

11. Vulnerable applicants (including definition, special reception facilities, identification mechanisms/referral, applicable procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children).

see 1) above about legal guardianship for UAM.

12. Content of protection – situation of beneficiaries of protection (including access to social security, social assistance, healthcare, housing and other basic services; Integration into the labour market; Measures to enhance language skills; Measures to improve attainment in schooling and/or the education system and/or vocational training)

13. Return of former applicants for international protection

14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)

15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)

* 16. Other relevant developments

1 character(s) minimum

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References and Sources

* 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box

- a) https://ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_ofpra_2016_1.pdf
- b) Eurostat / Senat report of 28th June 2017, n° 598 (2016-2017), Mrs Doineau and Mr Godefroy
- c) C.f. : https://ofpra.gouv.fr/sites/default/files/atoms/files/ra_ofpra2017_web_0604.pdf, consulted on
- d) Sénat Report n° 598 (2016-2017), 28 June 2017, Mme Élisabeth Doineau et M. Jean-Pierre Godefroy
- e) L741-3 ceseda: “When the asylum application is presented by a minor without any legal representative on the French territory, the public prosecutor, immediately advised by the administrative authority, appoints without any delay an ad-hoc administrator (...)”
- f) Tribunal Administratif de Paris 27 aout 2016 n°1613114 (about two unaccompanied minors from Syria) : <http://paris.tribunal-administratif.fr/content/download/83654/789357/version/1/file/Lettre%2048%20d%C3%A9cembre%202016%20bis.pdf> (page 66)
 - Tribunal administratif de Lille 9 septembre 2016 n°1606635 (about Irakian unacompanied minors in the Grande-Synthe Camp) <http://www.infomie.net/spip.php?article3350>. In this specific case, the judge has explained more in detail that the order should be executed within 48 hours, subject to a penalty of 500 euros per day. The penalty should be increased to 1000 euros per days until the order has been fully executed
 - Tribunal administratif de Paris 5 février 2018 n°1801653
 - Tribunal administratif de Paris 26 février 2018 n°1802996
 - Tribunal administratif de Lyon 19 avril 2018 n°1802611
 - Tribunal administratif de Paris 27 juillet 2018 n°1813549

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Consent for making the input publicly available

* Do you consent on making your input available on the EASO website?

- Yes
- No

Case law

Please include relevant case law and/or submit cases to [EASO Portal IDS on Caselaw](#)

http://www.bailii.org/ew/cases/EWCA/Civ/2018/1812.html
https://bhattmurphy.co.uk/files/documents/FTH%20Judgement.pdf
https://www.refworld.org/pdfid/5b55f08e4.pdf
http://paris.tribunal-administratif.fr/content/download/83654/789357/version/1/file/Lettre%2048%20d%C3%A9cembre%202016%20bis.pdf
http://www.infomie.net/spip.php?article3350

Contact details

* Name of the contributing stakeholder

Safe Passage International (France)

Contact person, Role

* Email

* I accept the provisions of EASO [Legal and Privacy Statements](#)

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